

Allianz Insurance plc

# Motor Prosecutions

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and stay within the law



**Allianz** 

DAC beachcroft

## Open Knowledge

At Allianz, our experts have a wealth of knowledge that can help our brokers and customers to better manage health and safety and keep up-to-date with legislation, which in turn will help to reduce accident frequency, allowing them to better manage insurance costs and concentrate on running a successful business.

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## DAC Beachcroft

DAC Beachcroft's specialist Motor Prosecutions lawyers understand the difficulties drivers and organisations face in an ever changing criminal and regulatory environment, and the need to balance the welfare of the driver while protecting the organisation's reputation against the potential impact of criminal proceedings or related civil claims arising from driving collisions.

Our national team is accessible 24/7. This ensures your driver has access to legal advice from the outset. Supported by our personal injury and credit hire claims specialists, our team then works quickly with you to safeguard your company's interests and that of your driver.



# Summary

Tough new laws have been introduced over the last few years to clamp down on dangerous and careless driving with penalties including large fines, driving bans and imprisonment for those caught breaking the law. As a result, any organisation requiring its employees to drive on business must ensure they drive safely and legally or risk a charge of corporate manslaughter if they are involved in a fatal collision.

This paper provides:

- An overview of offences, including drug driving and the respective sentences (Road Traffic Act, section 5A)
- An overview of the impact on driving at work policies
- Risk management

## **Target Audience**

- Employers who require employees to drive on business
- Employees who drive on business
- Commercial motor brokers
- Motor trade brokers
- Fleet managers



## Introduction

Improvements in vehicle technology and driver training mean that Britain's roads are getting safer. But, with statistics from the Department for Transport showing that in 2012 there was a total of 195,723 casualties in road accidents including 1,754 people killed, there is still more that needs to be done. <sup>(1)</sup>

To help improve driving standards - and in response to public pressure - drivers found guilty of endangering other road users as a result of their driving can face tough penalties. As an example, the offence of causing death by dangerous driving carries a mandatory custodial sentence, which could be up to 14 years.

Given that examples of dangerous driving include: being avoidably distracted by adjusting the controls on electronic equipment such as a radio, satellite navigation equipment or hands-free mobile phone; driving while deprived of sleep or rest; and driving a poorly maintained vehicle, it is a charge that could easily be brought against someone causing an

accident while driving for work purposes.

For a fleet manager or anyone who drives for work, it is important to be aware of these offences and take steps to reduce the risk. Company drivers are 40-50% more likely to have a collision than the average driver. Additionally, between 500 and 1,000 people die annually in collisions involving vehicles being driven for work purposes.

Furthermore, if an employee does cause a collision, the organisation risks reputational damage, an investigation by the Health & Safety Executive and potentially a charge of corporate manslaughter.

Without taking the necessary steps to manage this risk, organisations could find themselves and their employees facing some very serious charges.

(1) Reported Road Casualties in Great Britain: 2012 Annual Report, Department for Transport [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/245383/rrcgb2012-00.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245383/rrcgb2012-00.pdf)

# Summary of offences

Where a driver causes a collision through dangerous or careless driving, there are a number of offences they could be charged with. These have evolved over time, with new offences added as a result of public pressure.

## Causing death by dangerous driving (Road Traffic Act 1988, section 1)

This is the most serious road traffic offence and a driver will be charged with this where there is a fatality and the standard of their driving fell far below that of a careful and competent driver. When the court is assessing the seriousness of the offence, five factors are taken into account.

These are:

- Awareness of risk, where the driver exhibits a prolonged, persistent and deliberate course of very bad driving
- Effect of alcohol or drugs
- Inappropriate speed, including speeding or driving too fast for the road or weather conditions
- Seriously culpable behaviour of offender - this can include aggressive driving; driving while using a hand-held mobile phone; driving while avoidably distracted, which can include reading or adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment; driving when knowingly suffering from a medical or physical

condition that impairs driving skills; driving when knowingly deprived of adequate sleep or rest; and driving a poorly maintained or dangerously loaded vehicle

- Failing to have proper regard to vulnerable road users.

The sentencing guidelines are clear that, unless there are exceptional circumstances, a custodial sentence will be passed. The length of the sentence will depend on the case but the sentencing guidelines set it between two and 14 years. In addition, there is a minimum disqualification of two years and a compulsory extended re-test.



## DEATH BY DANGEROUS DRIVING

The sentencing guidelines are clear that **causing death by dangerous driving carries a custodial sentence unless there are exceptional circumstances.** The length of the sentence will depend on the case but the sentencing guidelines set it between two and 14 years. **In addition, there is a minimum disqualification of two years and a compulsory extended re-test.**



### Case study **Death by dangerous driving**

The defendant was involved in a road traffic accident on the M4 while talking on his hands-free mobile phone. He failed to see that vehicles in front of him had come to a stop for roadworks and collided with the rear of the deceased's vehicle without braking or taking any evasive action. He was charged with causing death by dangerous driving and pleaded guilty at the first opportunity. In sentencing, the judge remarked that, despite it not being illegal, talking on the hands-free mobile phone was clearly the cause of the distraction. He was sentenced to 30 months' immediate custody and a four year driving ban.

Source: DAC Beachcroft



## Case study

### Death by dangerous driving

The defendant, a HGV driver with 30 years' experience and no points or previous convictions, was travelling on the A1(M) southbound when he suffered a sneezing fit. The road was clear just before it happened but he suddenly felt a huge bang and came to a stop. The deceased had parked in lane one of the motorway and was rummaging in his boot when the defendant hit him.

Reconstruction evidence showed that the defendant had 12 seconds to see the deceased's vehicle and, notwithstanding that the deceased had parked in a perilous position, he should have been able to avoid him. He was charged with causing death by dangerous driving.

The defendant was adamant that he wanted to plead not guilty, saying that because of the sneezing fit he could not have seen him until the last minute. As expert evidence showed that the sneezing reduced the time but still left the defendant with time to react to the hazard, the issue was whether the defendant should have slowed down once he realised his vision was impaired. He said that he had not as he thought every sneeze would be his last.

The prosecution would not accept a plea to death by careless driving so the case proceeded to trial where he was acquitted of death by dangerous driving but convicted of death by careless driving. He was sentenced to 12 months in custody, in light of mitigating factors and the deceased's contribution to his own death, and banned for 18 months.

Source: DAC Beachcroft



### Causing death by careless driving (Road Traffic Act 1988, section 2B)

This offence was introduced in August 2008 following pressure from the public. Before, if someone's driving resulted in a fatality and it was deemed to be careless rather than dangerous, they could only have faced a charge of careless driving, which carries a small fine and some points on their licence.

To be regarded as careless rather than dangerous, the standard of driving must be regarded as having fallen 'below' rather than 'far below'. As an example a driver might have stopped at a junction, looked around but pulled out, hitting a cyclist they had failed to see.

The maximum penalty for this offence is five years' imprisonment with a minimum disqualification of 12 months and a discretionary re-test.



## Case study

### Death by careless driving

The defendant was travelling along the A533 in a HGV when he collided with a cyclist travelling in the nearside lane of the dual carriageway. There was evidence that the defendant had reacted before the impact and he was charged with causing death by careless driving, pleading guilty at the earliest opportunity.

In sentencing, the judge said that due to the road layout, the deceased cyclist, who had been wearing a high visibility jacket, would have been in view for several hundred yards and that, if the defendant had been concentrating on the road in front of him, he would have had sufficient time to do something about it. He was sentenced to 10 months' custody and a 12 month disqualification.

Source: DAC Beachcroft



The **maximum penalty** for this offence is five years' imprisonment with a minimum disqualification of 12 months and a discretionary re-test.

## Case study

### Death by careless driving

The defendant, a company director, had worked through the night in London. He finished work at 5.30am and decided to drive to Dover while the traffic was quiet and sleep there before a meeting in the afternoon.

As he was driving along the A20 in the outside lane he collided with a vehicle travelling in the nearside lane. Although only a relatively minor impact, the other driver's vehicle collided with the barrier on the nearside, which penetrated through the rear of the car causing the death of a mother of two children who was travelling in the back seat with her daughter.

Examination of the defendant's mobile phone records showed that in the days before the collision he had had significantly disturbed sleep. There was no forensic evidence to suggest anything untoward about the manner of driving prior to the collision, although he had been travelling slightly in excess of the speed limit.

The defendant was initially charged with causing death by dangerous driving but after representations to the CPS by his legal team, the charge was reduced to that of causing death by careless driving. The judge held the case to fall within the most serious bracket of the sentencing guidelines as the defendant was driving when knowing he was deprived of adequate sleep or rest. He was sentenced to 18 months' immediate custody and a three year disqualification.

Source: DAC Beachcroft

This is a new offence which was introduced on 3rd December 2012 to fill the gap between the offences of causing death by dangerous driving, with a maximum custodial sentence of 14 years, and dangerous driving, with a maximum of two years.



### Causing serious injury by dangerous driving (Road Traffic Act, section 1A)

Where there is no fatality, the police will look to charge someone under this offence.

It is also important to note that the definition of serious injury is that used under section 20 of the Offences Against the Person Act 1861, commonly known as inflicting grievous bodily harm. As such, the type of injury that could lead to this charge includes a broken leg or fractured cheek bone.

It carries a maximum custodial sentence of five years and a minimum disqualification of 12 months.

The latest addition to the road traffic offences is driving with concentrations of specified controlled drugs above specified limits, more commonly known as drug driving.



### Drug driving (Road Traffic Act, section 5A)

The government estimates that drug driving causes around 200 deaths a year in Great Britain and the introduction of this offence will bring the legislation in line with that in place for drink driving.

The government is currently finalising the rules relating to the limits that will be included in the legislation with further details expected later this year. However, in its consultation document it proposed a zero tolerance approach to eight controlled drugs, setting the limit at a very low level so as not to catch someone who had inadvertently consumed it. These drugs are: cannabis; cocaine; MDMA (ecstasy); ketamine; benzoylecgonine (primary metabolite of cocaine); lysergic acid diethylamide (LSD); methamphetamine; and

6-monoacetylmorphine (heroin and diamorphine). It also proposes that the rules are extended to cover a further eight controlled drugs which are used for medical purposes. These are clonazepam, diazepam, flunitrazepam, lorazepam, methadone, morphine, oxazepam and temazepam.

Police will be entitled to conduct three preliminary saliva tests with the option to request a blood test if a positive result is returned. This will make it easier to gather the necessary evidence to prosecute anyone committing a drug driving offence.

The legislation is expected to be in place towards the end of 2014 and the penalty is a maximum of six months' imprisonment and/or a fine up to £5,000 and an automatic driving ban of at least 12 months. The only defence will be a medical one.

# Sentencing

The nature of these offences means they are amongst the hardest type of cases to sentence. To assist judges, the Sentencing Guidelines Council has agreed a set of principles that help judges determine the penalty while also ensuring consistency of approach throughout the UK.



**It is always important to note that these guidelines are not intended as a straightjacket, though a judge would have to justify in open court the reasoning to deviate from the guidelines.**

## Approach to sentencing

With all of these offences a structured approach is taken to sentencing. The process follows these steps:

### 1. Identify dangerous offenders

The court will consider whether there is a significant risk of the offender committing a further offence.

### 2. Identify the appropriate starting point

The court will identify the level or description that most nearly matches the offence to give them the appropriate sentencing range and starting point. As an example, with death by dangerous driving there are three levels, as follows:

**After identifying the appropriate starting point, the court then goes on to consider:**

### 3. Relevant aggravating factors

Where there are additional aggravating factors it can result in a sentence level that is higher than the starting point, sometimes substantially so. As an example, the aggravating factors for causing death by dangerous driving include:

- previous convictions for motoring offences, especially ones involving bad driving or the consumption of excessive drugs or alcohol
- more than one person killed as a result of the offence
- serious injury to one or more victims in addition to the fatality
- disregard of warnings
- other offences committed at the same time such as driving while disqualified or taking a vehicle without consent
- the offender's irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible
- driving off in an attempt to avoid detection or apprehension.

Nature of offence	Starting point	Sentencing range
<b>Level 1:</b> The most serious offences where driving involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	8 years' custody	7-14 years' custody
<b>Level 2:</b> Driving that created a substantial risk of danger	5 years' custody	4-7 years' custody
<b>Level 3:</b> Driving that created a significant risk of danger	3 years' custody	2-5 years' custody

#### 4. Mitigating factors and personal mitigation

Mitigating factors can result in a sentence level that is lower than the starting point. As an example, the mitigating factors for causing death by dangerous driving include:

- alcohol or drugs consumed unwittingly
- serious injury to the offender in the collision
- the victim was a close friend or relative
- actions of the victim or a third party contributing significantly to the likelihood of a collision occurring
- offender's lack of driving experience
- the driving was in response to a proven and genuine emergency.

#### 5. Reduction for guilty plea

Once aggravating and mitigating factors are taken into account to determine the sentence, the court will then apply a reduction if there was a guilty plea. This will reduce the sentence by a third.

#### 6. Ancillary orders

The court will decide whether ancillary orders such as a disqualification or a compensation order are appropriate or necessary.

#### 7. Totality principle

The court will review the sentence to ensure it is proportionate to the offence and properly balanced.

#### 8. Reasons

The court is required to indicate the factors it has taken into consideration when sentencing.

### Case study

#### Mitigating factors in a prosecution for death by careless driving

The defendant, a father of two with previous good character, was travelling in a residential area behind a motorbike which was itself behind another vehicle.


He took his eyes off the road momentarily to adjust his heater and on looking up saw the motorcycle had come to a stop but was unable to avoid colliding with it, causing the death of the rider.

The police's collision investigation report showed the defendant was not speeding and had reacted by braking once he had established the motorcycle had stopped.

He was charged with causing death by careless driving and pleaded guilty at the earliest opportunity, receiving a sentence of a 30 week prison sentence suspended for two years, 200 hours unpaid work, a 12 month driving disqualification and £1,200 costs.

There were many mitigating factors including genuine remorse, good character and a guilty plea at the earliest opportunity. Initially the judge considered sentencing in the middle bracket of the sentencing guidelines due to a car heater being viewed as an electronic device but went on to indicate that the case was instead at the top end of the lowest bracket as it was a 'momentary inattention'.

Source: DAC Beachcroft



For more than a fifth of the journey time drivers carry out secondary tasks\* such as eating a sandwich or reading incoming emails.

\*See Klauer et al. 100 Car Naturalistic Driving Study (2010)

In 10% of accidents the driver lost attention despite looking at the road.\*

\*AZT Automotive GmbH - Allianz Centre for Technology  
Dr. Christoph Lauterwasser

A fifth of all distractions found in accidents are conversations, arguments or looking after children.\*

\* See Stutts et al (2001)

## Impact on the employer

Where an employee is charged with one of these motoring offences there can be serious ramifications for the employer too.

In addition to reputational damage and potential business interruption, the Health & Safety Executive (HSE) and the Vehicle and Operator Safety Agency (VOSA) may also look to conduct an investigation to determine whether the employer's actions contributed to the collision. This could result in a prosecution, potentially for corporate manslaughter if the HSE or VOSA identifies systemic failures.

### Driving at work policy

As part of its investigation the HSE will look at an employer's driving at work policy as well as other associated documents such as the mobile phone policy and drivers' hours policy. Therefore, to help safeguard employees and reduce the risk of a prosecution, it is essential that an employer includes the following in its driving at work policy:

- **Driver safety**  
This should include details of licence checks and any rules around reporting driving convictions or accidents at work
- **Vehicle safety**  
This needs to outline any checks that are required and what an employee should do if he or she identifies a defect
- **Journey planning**  
This should include rules around taking breaks to ensure that employees do not drive when tired. It also needs to highlight what an employee can do if they believe the amount of driving required will increase risks
- **Mobile phones**  
As well as highlighting the fact that using a handheld phone while driving is illegal, it should also draw attention to the fact that drivers using a hands-free set can still be prosecuted if it affects their driving







- **Electronic equipment**

This needs to cover other potential distractions including satellite navigations systems, tablets, computers and radios

- **Drink and drugs**

This needs to cover the employer's policy on drink, drugs and any prescription or over the counter medicines that might affect driving

It is also important to include details of what an employee should do in the event of a collision. In addition to practical advice to ensure they are safe and contact the police if this has not been done, it also needs to draw their attention to contacting their employer and its insurer as this will enable them to receive appropriate legal representation if they are approached by the police either as a suspect or a witness to an accident.

Having the guidance and support of a solicitor at this point can be particularly important. The content of a defendant's first statement is often given the greatest weight in court so it is important that they do not unwittingly incriminate themselves or their employer.

For example, falsely claiming that one of the victims was responsible for the collision is an aggravating factor for a death by dangerous or careless driving charge and would increase their sentence.

## **Working practices**

While a comprehensive driving at work policy is a good starting point, it is also essential that an employer considers how other working practices might affect employees driving for work purposes.

As an example, if an employer sets high targets for sales, this might inadvertently lead to increased

risk as employees feel compelled to drive long hours making them tired and more likely to cause an accident. Similarly, if the employer provides electronic equipment to employees, for example a mobile phone or satellite navigation systems, they must set rules around how and where these are used to ensure that employees are not distracted while driving.

## **Employment issues**

If an employee is charged with a driving offence there are other implications for organisations too. It can take as long as 12 months for the case to go to court, during which time the employee is likely to be on bail and able to work. Employers will need to consider whether it is appropriate for the employee to drive during this period.

Some employers may decide the employee should not drive at all or employ a chauffeur if they are a senior executive. Other organisations might require the employee to undergo a driving refresher course or have another employee accompany them to oversee their driving for a number of months. In all cases though, it is essential that the employer has a transparent and documented approach.

It is also standard practice for the police to retain the vehicle until the case has been concluded. This could cause problems for the business, especially where operations are dependent on the vehicle.

## Summary and guidance

With harsh penalties for motoring offences and ramifications for the organisation as well as the driver, it is imperative that employers do everything they can to safeguard their employees and other road users.

### Creating a safer driver culture

Creating a culture where employees understand the risks and only drive carefully, considerately and when they are fit to do so is essential. As a starting point, driving at work policies and other associated policies must outline the potential risks and detail the steps employees should take to avoid them. For example, the risks associated with driving while tired should be highlighted and safer driving encouraged through sensible journey planning including allocating time for breaks.

As well as taking steps to prevent road traffic accidents, employers also need to ensure that, if an employee is involved in a collision, they receive the support they need. Key to this is providing an emergency contact point, either within the organisation or through its insurer, to enable them to receive legal advice or representation as soon as possible. Having legal advice is not an admission of fault but the advice of an experienced solicitor can make a significant difference to the outcome.

### Allianz's Safer Driving for Work Handbook

Allianz's Safer Driving for Work Handbook, which can be found on [www.riskdirector.co.uk](http://www.riskdirector.co.uk), provides a wealth of advice on safe driving, and can be used to support fleet managers and health and safety executives to update their companies' driving policies. This well rounded approach will ensure that if an employee is involved in a driving offence the right support is in place to manage the associated risks.

### Managing the risks

Even minor collisions can have a big impact on a business. Having reduced levels of staff whilst injured employees recuperate or having vehicles off the road, being repaired, can impact on a company's ability to deliver services and efficiency. In addition to this, a higher frequency of claims can lead to unforeseen payments in the form of excesses and a detrimental effect on insurance premiums.

Allianz utilises data to help its policyholders to pin-point where their fleet is most at risk. By providing a breakdown of their accident experiences trends can be recognised. This enables the policyholder to take the right risk management approach. For example, employees can refresh their driving skills by undertaking targeted driver training courses\*.

This tailored approach to risk management helps policyholders to better manage their risk exposure, reduce their claims frequency and insurance expenditure. Whilst at the same time it helps to create a culture where safer driving is encouraged and embraced.

**For further information on driver safety visit:**  
[www.riskdirector.co.uk](http://www.riskdirector.co.uk)

## \* Raising Road Safety Standards all over the World

The UN “Decade of Action for Road Safety 2011-2020” was established by the United Nations General Assembly. It aims to save five million lives worldwide by 2020 through improved road injury prevention, particularly in low-and middle-income countries, which account for 90% of global road deaths and injuries.

As a partner, Allianz is working to significantly raise public awareness about road safety issues. Allianz supports new road safety legislation in a joint effort with the FIA Foundation and the World Health Organization and works exclusively with RoSPA, which has been at the forefront of promoting road safety in this country and abroad, and has built an unrivalled reputation as an innovative provider of risk management and fleet solutions. Should Allianz’s policyholders require driver training, RoSPA offers a variety of courses at exclusively reduced rates.



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